IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2005

CORAM

THE HON'BLE MR.MARKANDEY KATJU, CHIEF JUSTICE
and
THE HON'BLE MR.JUSTICE D.MURUGESAN

W.A.No.3043 of 2003
and
W.A.M.P.No.4823 of 2003
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1. The Secretary to Government of Tamil Nadu,
   Housing and Urban Development,
   Fort St.George, Chennai - 19.

2. The Special Deputy Collector,
   Land Acquisition Cell,
   C.M.D.A., Chennai - 8. ..Appellants.

Vs.

1. J.Sivaprakasam
2. J.Santhi
3. Lakshmikanthan
4. J.Usha Rani
5. K.V.Lakshmipathy
6. L.Saroja
7. K.V.L.Balaji
8. K.L.Ethiraj
9. K.Jayanthi
10. K.Meera
11. St.Alfred Educational Trust,
    rep. by its Managing Trustee,
    Dr.John Alfred. ..Respondents.

PRAYER: Appeal filed under Clause 15 of the Letters Patent

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Against the order of this Court passed in W.P.No.7789 of 2000 dated 10.04.2003, as stated therein.

For Appellant :: Mr.V.Raghupathi,
Government Pleader.

For Respondents :: Mr.R.Gandhi, Senior Advocate
for Mr.V.P.Sengottuvel.

J U D G M E N T

(The Judgment of the Court was delivered by The Hon'ble The Chief Justice)

This writ appeal has been filed against the impugned judgment of the learned single Judge dated 10.04.2003. We have heard learned counsel for the parties and perused the records.

2. The short question in this writ appeal is whether there has been violation of Section 4 of the Land Acquisition Act, 1894.

3. Section 4(1) of the Land Acquisition Act reads as follows:-

> "4. Publication of preliminary notification and powers of officers thereupon. - (1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification)."

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4. The notification dated 13.11.1998 under Section 4(1) in the present case was published in the Tamil Nadu Government Gazette on 16.12.1998 and in the Tamil newspapers '*Kathiravan*' and '*Madurai Mani*' on 06.01.1999, although the property is situated in Chennai, where the aforesaid newspapers have little or no circulation.

5. The requirements of Section 4(1) of the Land Acquisition Act have been held to be mandatory by the Supreme Court vide,*Khoob Chand Vs. State of Rajasthan, AIR 1967 SC 104, Narendrajit Singh Vs. State of U.P., AIR 1971 SC 306, etc.*

6. It may be mentioned that Section 4(1) of the Land Acquisition Act was amended by Act 68 of 1984 and a further requirement was made that the notification shall be published in two daily newspapers circulating in the locality of which at least one shall be in the regional language. As held by the Andhra Pradesh High Court in *Devireddy Venkatasubbareddy and Another Vs. District Collector, Nellore, AIR 1986 AP 124* the amended requirement is also mandatory. Before the amendment of 1984 Section 4(1) required the notification to be published only in two modes viz.,

(i) in the official gazette; and
(ii) publication in the locality of the substance of the notification (the local publication).

The local publication was held to be mandatory by the Supreme Court, and for the same reasons, the Andhra Pradesh High Court held that the additional requirement of publication in two daily newspapers of which atleast one is in the regional language is also mandatory. The mere publication in the official gazette was not deemed sufficient by Parliament, and hence Parliament provided for an additional requirement of publication in two daily newspapers circulating in the locality of which at least one should be in the regional language. This additional requirement was also held to be mandatory by the Andhra Pradesh High Court, and we are in agreement with its view.

7. In *Rameshwar Saran and Others Vs. The State of U.P. & Others, 1988 Allahabad Law Journal 559* a Division Bench of the Allahabad High Court quashed a notification under Section 6 on the ground that there were no publiction of the notification

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under Section 4(1) in the local newspapers. The Division Bench observed:-

> "It is well settled that any legislation which has the effect of depriving a person of his land has to be strictly interpreted. It is also well settled that there has to be strict compliance with the provisions of the Statute before a person can be deprived of his land. Although it is no longer a fundamental right, the very provision of Article 300-A of the Constitution makes it clear that a person cannot be deprived of his property except in accordance with law. That makes it obligatory on the part of the State or any acquiring body to strictly comply with the law of acquisition of property. The very basis of any acquisition proceeding under the Land Acquisition Act is the publication of notification under Section 4(1) of the Act. Prior to 24th September, 1984, the law required publication of the notification in the gazette and publishing of the substance of the notification in the locality and the date for the purpose of filing objections under Section 5A was to be counted from the date of publication of the notification in the Gazette. After the amendment in 1984 the State Government has to do the publication in one additional manner viz., publishing the notification in two newspapers having circulation in the locality and one in a regional language."

We agree with the view of the Allahabad High Court.

8. In *Ram Jiyawan Vs. State of U.P. and Others, AIR 1994 All 38* the Allahabad High Court held that

> "there can be no acquisition of land without issue of notification under Sections 4(1) and 6 (1). Not only notifications are to be issued under these provisions, the notifications must also conform to the requirements of these two sections. Accordingly, if acquisition is proceeded with, without issuing notifications

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under one of the sections or with defective notification the acquisition itself will fall."

9. In *Rajmal & Others Vs. State of Rajasthan & Others, AIR 1997 Rajasthan 68*, the Rajasthan High Court held that *"the expression 'newspapers circulating in the locality' means newspapers having sufficient number of subscribers or readers in the locality. If, the number of subscribers or readers are meager or none, then it could not be taken to be newspapers having circulation in that locality"*. We agree with the view of the Rajasthan High Court. In our opinion the expression *"newspapers circulating in the locality"* means the newspapers having reasonably wide circulation in the locality.

10. Section 4(1) requires publication in two daily newspapers circulating in that locality. There is no material to establish that the newspapers *'Kathiravan'* and *'Madurai Mani'* are circulating in Chennai where the property is situated. No material has been placed before us by the appellants to establish that the said newspapers have reasonably wide circulation in Chennai.

11. The purpose of requiring circulation in the locality is that people may get to know about the said notification under Section 4(1) so that they may be able to file their objections under Section 5-A or take other legal steps as they deem fit. In this connection we may also mention that the newspapers in which the notification under Section 4(1) is published must be *'newspapers'* having reasonably wide circulation in the locality. There are many newspapers which have little or no circulation and hence naturally publication in the said newspapers will not amount to a valid publication under Section 4(1), even if such newspapers have been registered under the Press Council Act or some other Act.

12. It may be mentioned that there are many so called *'newspapers'(some of which are even registered with the Press Council Act or some other enactment)* which have little or no circulation and which are brought out from time to time merely to create a defence in case some auction or notification is

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challenged in Court. In our opinion, publication in such newspapers which have little or no circulation in the locality concerned will not be a valid publication. There may be fake newspapers which from time to time bring out only ten copies of any issue, or even no copy at all, the whole idea being to create a justification or defence if challenge is made in Court to the validity of some auction, notification, etc. In all such cases we will have to examine whether the notice or notification was published in newspapers having reasonably wide circulation in the locality. Unless that is established we may be compelled to hold that it is a fake newspaper or there was no adequate publicity in the locality, and hence the very purpose of such notice or notification is lost.

13. In the present case the appellants have not established that '*Kathiravan*' or '*Madurai Mani*' have reasonably wide circulation in the city of Chennai where the property in question is situated. Hence, such publication of the notification under Section 4(1) in our opinion does not comply with the mandatory requirement of Section 4(1). As such the entire Land Acquisition proceedings are vitiated.

14. For the reasons given above, we find no merit in this appeal and it is dismissed. No costs. Consequently, connected W.A.M.P. is also dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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1. The Secretary to Government of Tamil Nadu,
   Housing and Urban Development,
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2. The Special Deputy Tahsildar,
Land Acquisition Cell,
C.M.D.A., Chennai - 8.

+1cc to Mr.V.P.Sengottuvel,Advocate in SR.No.8044

+1cc to Govt.Pleader,in SR.No.8162

PSI(CO)

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